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IN THE

Supreme Court of the United States

October Term, 1971
No. 71-1177

ALTON J. BAILEY, LEROY SMITH, and THE GENERAL LONGSHOREWORKERS INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL UNION NO. 1830, PORT ALLEN, LOUISIANA,

Petitioners,

- versus -

GEORGE DIXON, THOMAS W. GLEASON, RALPH MASSEY, MARK L. YOUNG, and the INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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(2999)

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STATEMENT OF THE CASE

Petitioners (hereinafter "Bailey") seek review of a judgment of the District Court (314 F.Supp. 452) affirmed by the Court of Appeals for the Fifth Circuit (66 LC ¶12,201) sustaining the imposition of a trusteeship by the International Longshoremen's Association (hereinafter "ILA") over one of its constituent Locals, Local 1830.

ILA, under its Constitution (Gleason's 5-A 252)*, Article XX, Section 1, is authorized to impose a trusteeship upon a Local for any of the following purposes:

1. to correct corruption,
2. to correct financial malpractices,
3. to assure the performance of collective bargaining agreements,
4. to assure the performance of the duties of a collective bargaining representative,
5. to restore democratic procedures,
6. otherwise to carry out the objects and purposes of the ILA.

The foregoing purposes are essentially the same as those set forth in the Labor Management Reporting and Disclosure Act (LMRDA) §302, 29 U.S.C.A. §462, which follows:

* References to Appendix in Court of Appeals

"Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization. Pub. L. 86-257, Title III, §302, Sept. 14, 1959, 73 Stat. 531."

As stated therein, the only requirement under LMRDA in imposing a trusteeship is that it shall be imposed in accordance with the Constitution and By-Laws of the organization imposing the trusteeship.

The ILA received a petition (A 343-345) containing charges against Bailey including charges that:

(a) Bailey had excluded the duly elected financial secretary and the duly elected recording secretary from the union hall, their minutes and other documents; and

(b) had subverted and placed funds of the Local in a checking account which required only his signature in violation of the ILA and Local's Constitutions

(Gleason's 5-A 252). The petition asked ILA to impose a trusteeship over the Local.

The Executive Council of the ILA, in accordance with the Constitution (Gleason's 5-A 252), Article XX, Section 2, appointed a Committee to hear evidence on the charges and report back to it.

By letter dated July 11, 1969 (A 360), Bailey was provided with a copy of the petition. The letter also set July 29, 1969 as the date for a hearing on the charges. The hearing was adjourned until August 12, 1969, at the request of Bailey's counsel, who was unavailable for the July 29th date.

On August 12th, the hearing was held. It started at 11 A.M. and lasted almost to 12 Midnight. The transcript of the hearing (Appendix H to Petition) consists of almost 500 pages.

Subsequent to the hearing, Bailey's counsel, in a letter to Thomas W. Gleason, President of the International, and a Repondent herein (A 130-131) stated:

> "I want to thank you and your committee for giving my client, the Local 1830 and its officers, a chance to be heard at the hearing held by the Trial Committee on Tuesday, August 12, 1969. I want to thank you personally for the courtesy extended me in changing the hearing date from

July 29, 1969, to August 12, 1969, so that I could appear and be heard.

The Committee heard all of our evidence *** "

It is to be noted that the foregoing letter contained no charges that the Trial Committee was prejudiced in any way nor as Petitioner alleges herein (P. 12)* that

"the hearing was not full and fair but rather was of the nature of a 'kangaroo' court * * * "

On September 26, 1969, the Committee submitted its report (A 339-342) to the Executive Council, recommending that Local 1830 be placed in trusteeship. On October 1, 1969, the Executive Council voted to impose a trusteeship over Local 1830.

Bailey then instituted an action in the District Court to have the trusteeship held invalid.

A hearing on Bailey's motion for a preliminary injunction and summary judgment was held in the District Court. (A 81-224)

At the hearing, Bailey's counsel raised the following points:

* Refers to Pages in Petition

(a) The hearing before the Trial Committee did not meet the requirements of the LMRDA. The Trial Committee was prejudiced. (A 88-89).

(b) The Trial Committee lacked jurisdiction because the charges were not filed with the Local. (A 91)

(c) There was insufficient evidence to support the findings. (A 93)

It was stipulated that the evidence in support of Bailey's motion for a preliminary injunction could be used in support of Bailey's action for a permanent injunction. (A 102)

On June 26, 1970, while the matter was still pending before the District Court, Bailey filed a motion (A 277) in which he sought an order of the court requiring ILA to hold an election of officers for Local 1830. The motion was denied on June 30, 1970. (A 281)

The District Court upheld the validity of the trusteeship and in its Findings of Fact and Conclusions of Law (P. Appendix "B" 75-76) stated:

> "There is no doubt but that the troubles in which this local union finds itself embroiled result from the unfortunate fact that there are two incompatible factions within the

union. But be that as it may, a complaint was duly filed in accordance with the provisions of the Labor-Management Reporting and Disclosure Act, 29 USCA §464, and a hearing has been held before a Trial Committee as required by the constitution of the International Longshoremen's Association. The Committee did hold a lengthy hearing and did make its report to the Executive Committee as required by the union's constitution. The report of the Trial Committee to the Executive Committee was to the effect that a trusteeship should be imposed upon Local 1830 for reasons which, in their opinion, were included under the provisions of Title 29 USCA §462. While this Court might not agree with all of the conclusions reached by the Trial Committee, and while it may or may not have reached the same conclusions as did the Executive Committee, nevertheless, a review of the lengthy transcript of the hearings held by the Trial Committee indicate to this Court that the trusteeship imposed by the International Longshoremen's Association was imposed in good faith and in accordance with the requirements of the constitution of the International Longshoremen's Association and the Labor-Management Reporting and Disclosure Act, and therefore presumed to be a valid trusteeship for a per-

iod of eighteen months. 29 USCA §464(c). The plaintiffs have failed, in the opinion of this Court, to meet the burden of demonstrating by pure and convincing proof that the trusteeship was not established in good faith, and therefore it must be presumed to be a valid trusteeship for a period of eighteen months. It is not the function of this Court to substitute its judgment for that of the Trial Committee. As long as there is substantial evidence upon which to base the judgment of the Trial Committee, this Court does not have the right to set their finding aside. This Court does find, as a fact, that there is substantial testimony upon which to base the Trial Committee's conclusion that a trusteeship should be imposed upon Local 1830, and for this reason, the trusteeship should not be disturbed by this Court for a period of eighteen months following its inception." (emphasis supplied)

Judgment was entered July 9, 1970 (A 292) and on July 20, 1970, Bailey moved for a new trial (A 293-298) alleging that the refusal of the Administrator to accept Bailey's tender of dues showed bad faith by the ILA against him.

In his Statement of the Case herein (P. 18) Bailey alleges that in an affidavit

filed by Julius Miller, counsel for the ILA, it was admitted that Bailey's dues had been wrongfully refused by the Administrator.

This statement is an attempt to mislead this Court as to the action of the ILA in this matter. The affidavit of Julius Miller (A 305-307) clearly indicated the good faith of the International in authorizing the Administrator to accept the dues of Bailey.

The ILA, if as Bailey would have this Court believe, was seeking to oust Bailey from the union, could have strictly interpreted the Local's By-Laws and the International Constitution and found that Bailey's failure to pay dues after the imposition of the trusteeship was sufficient to drop him as a member. Instead, the ILA found that since there was a court action pending, Bailey was not in the same position as other members who had been dropped for failure to pay dues and would not have to pay a new initiation fee. (A 305)

The ILA's good faith towards Bailey was apparent by its action in this instance.

The District Court dismissed the motion for a new trial. (A 304)

The Court of Appeals affirmed, stating: (P. 64)

"We have reviewed the record and find that the Trial Committee's result is supported by substantial evidence and that the District Judge acted correctly when he ordered that,

> '[T]he motions of the plaintiffs for a preliminary and/or permanent injunction and for summary judgment will be denied, and this suit will be dismissed on the merits.' 314 F.Supp. at 454."

A Petition for Rehearing was denied. (P.65-71)

ARGUMENT

POINT I

THE FINDINGS OF THE DISTRICT COURT THAT THE TRUSTEESHIP OVER LOCAL 1830 WAS IMPOSED IN GOOD FAITH AND IN ACCORDANCE WITH THE REQUIREMENTS OF THE CONSTITUTION OF THE ILA AND THE LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT, §301, et. seq., 29 USC. §461, et seq., AND THAT THERE WAS SUBSTANTIAL EVIDENCE TO IMPOSE SUCH TRUSTEESHIP ARE NOT "CLEARLY ERRONEOUS" WITHIN THE MEANING AND INTENT OF RULE 52, FEDERAL RULES OF CIVIL PROCEDURE.

The Labor Management Reporting and Disclosure Act §302, 29 U.S.C. §462 sets forth the rules for the establishment of trusteeships as follows:

> "Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body ..... "

The District Court, in its opinion stated: (P. 75-76)

> "* * * * a complaint was duly filed in accordance with the provisions of the Labor-Management Reporting

and Disclosure Act, 29 USCA Sec. 464, and a hearing has been held before a Trial Committee as required by the constitution of the International Longshoremen's Association. That Committee did hold a lengthy hearing and did make its report to the Executive Committee as required by the union's constitution. The report of the Trial Committee to the Executive Committee was to the effect that a trusteeship should be imposed upon Local 1830 for reasons which, in their opinion, were included under the provisions of Title 29 USCA Sec. 462. While this Court might not agree with all of the conclusions reached by the Trial Committee, and while it may or may not have reached the same conclusions as did the Executive Committee, nevertheless, a review of the lengthy transcript of the hearings held by the Trial Committee indicate to this Court that the trusteeship imposed by the International Longshoremen's Association was imposed in good faith and in accordance with the requirements of the constitution of the International Longshoremen's Association and the Labor-Management Reporting and Disclosure Act, and therefore presumed to be a valid trusteeship for a period of eighteen months. 29 USCA Sec. 464(c).* * * "

The Act, §304(c), 29 U.S.C. §464(c) provides:

> "In any proceeding pursuant to this section a trusteeship established by a labor organization in conformiy with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or before such other body as may be provided in accordance with its constitution or bylaws shall be presumed valid for a period of eighteen months from the date of its establishment and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under section 462 of this title." (emphasis supplied)

The District Court found that: (P. 76)

> "* * * The plaintiffs have failed, in the opinion of this court, to meet the burden of demonstrating by pure and convincing proof that the trusteeship was not established in good faith, and therefore it must be presumed to be a valid trusteeship for a period of eighteen months.* * *"

Since the trusteeship imposed over Local 1830 was established in good faith in accordance with the procedural requirements of ILA's Constitution, it was entitled to the presumption of validity provided for by the statute in the proceeding in the District Court.

On the other hand, Bailey was required to establish in the District Court, by clear and convincing proof that the trusteeship was not established in good faith. The requirement of clear and convincing proof to upset a trusteeship was specifically included in the Act to give international unions freedom of action in imposing such trusteeships when it was deemed necessary.

The question as to whether the proof should be "clear and convincing", or a lesser degree was debated in the United States Senate.

> Mr. Lausche: "* * * There is contained in the bill language to the effect that the receivership shall continue unless a complaint, by clear and convincing proof, shows that the trusteeship has not been established in good faith."
>
> Mr. Dodd: "That is what is called the highest evidentiary standard we have in our law. Does not the Senator agree with me?"

Mr. Lausche: "I know of no other standard in law which is higher."

Mr. Dodd: "A very heavy burden would be put on the local union member under the clear and convincing proof doctrine. A craftsman trying to fight the unfair imposition of a trusteeship on a local would be burdened with the hardest evidentiary doctrine in law."

Mr. Ervin: "I am sure the Senator would not want it to be unclear and unconvincing proof."

Mr. Dodd: "No, but it ought to be reasonable proof. That is ordinarily the doctrine."

The Labor Reform Law, Bureau of National Affairs, Appendix G 4, pps. 431-434,

Congressional Record 4/24/59, pps. 5982-5985

However, the viewpoint expounded by Senator Dodd was not accepted and the clear and convincing requirement was adopted.

The following is an excerpt from the House Labor Committee's Report on Trusteeships. The Labor Reform Law, Bureau of National Affairs, p.282:

"The bill supplies a guideline for determining whether a trusteeship meets the statutory standard. Recognizing the delicate judgments which international officers are called upon to make in imposing a trusteeship and conscious of the relative inexpertness of outsiders, the bill provides that for 18 months a trusteeship--

> shall be presumed valid * * * and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under section 302.

The presumption is available, however, only if the trusteeship was instituted and maintained in procedural conformity with the constitution and by-laws of the international labor organization and authorized or ratified after a fair hearing either by its executive board or other body provided in its constitution. This limitation will encourage the use of fair procedure within the union. The purpose is to make it plain that an honest decision by the international officials is not to be overturned during the first 18 months of the receivership upon a question of fact or of degree or of judgment as to the necessity for im-

posing it. On the other hand, if dishonesty or bad faith is proved, either with respect to the establishment or maintenance of a trusteeship, the bill provides a remedy." (emphasis supplied)

The foregoing Report, in discussing suits in the District Courts brought by a member, states at p. 283:

"The suit would be tried in the same manner as any proceeding in equity except that the presumptions described above would be controlling in the absence of countervailing evidence." (emphasis supplied)

Bailey produced no countervailing evidence and the District Court (A 290) properly determined that Bailey had failed to meet the burden imposed upon him by statute in his attempt to invalidate the trusteeship.

However, Bailey, in his Petition herein, attempts to persuade this Court that the ILA had no evidence to support a trusteeship, despite the record of almost five hundred pages, and the unanimous report of the Hearing Committee.

The Committee's report stated, in part, (A 339-342) as follows:

"Many of the charges made against Alton J. Bailey were sufficiently established in a voluminous record con-

sisting of over 500 pages.

In recommending that a trusteeship be imposed over Local 1830, the Committee relies principally on certain charges contained on Page 2 of the Charges to the International.

It was charged that President Bailey had 'subverted certain funds from the checking account of the said Local and has placed same in a checking account in the First National Bank of Port Allen which requires only his signature, all in violation of the Local and International Constitution and the laws of the United States.'

The evidence established that President Bailey indeed did open an account as charged with only his name as signatory.

The International Constitution provides under Article XIII, Section 7, that:

'The Financial Secretary or Treasurer shall receive all monies paid to the Local Union and deposit them in its name in such bank or banks or invest them in such government securities as the Executive Board may direct. Unless otherwise provided by the By-Laws, he shall sign all checks drawn upon the Local Union.'

The Local's By-Laws do not provide otherwise and the opening of the bank account by President Bailey with only his name as signatory is clearly a violation of both the International Constitution and the Local's By-Laws.

President Bailey was also charged with excluding the Financial Secretary from the Union Hall and preventing him from having access to those documents required for the performance of his duties.

Mark Young was duly elected and installed as the Secretary-Treasurer (Financial Secretary), however, Mr. Young testified on Page 73 of the transcript that President Bailey had had the locks to the Local offices changed; that he requested a key to the locks and a combination to the safe so that he could go to work and that President Bailey told him:

'if I decide you need one, I will let you have one.'

This testimony was confirmed by the testimony of President Bailey himself. Mr. Bailey testified at Page 473:

'What Mr. Mark Young means is that he wants a key to -- he wants access

to the building any -- any time he wants it, twelve o'clock at night, one o'clock in the morning or any other time he sees fit to come in, open the safe or to do whatever he wants to do with the records of the organization: I don't see it that way.'

He was asked by the Chair:

"Q. Isn't he financial secretary of the Local?
A. Yes, he's financial secretary of the local. That doesn't give him the authority --
Q. Does he have access to the combination of the safe of the Local?
A. I'm supposed to have access to it.
Q. I said does Mr. Young have it?
A. I'm supposed to have access to it.
Q. I said does Mr. Young have it?
A. No, he does not. He had it until he abused it.'

The Committee finds from all the evidence that President Bailey did in fact prevent Mark Young, duly elected Secretary-Treasurer, from carrying out the duties of his office.

It was also charged as follows:

'WHEREAS, on Monday, June 16, 1969 President Alton J. Bailey, aided and

assisted by certain other members of the Local, who purported to act as officers of the Local, did, in violation of the Constitution of International and in violation of the Constitution of the Local, introduce, read and pass certain legislation which amended the Constitution of the Local without notice to the membership, without due reading as required by the Local Constitution and without due reading at two successive meetings, all in violation of the Constitution of Local 1830 and the International Constitution;'

The Committee finds that President Bailey, at the meeting of June 16, 1969, permitted a vote to be taken to lower the initiation fee from $500 to $200 in violation of the Local's By-Laws which prohibits a resolution of this nature from being voted upon at the meeting at which it was introduced. This vote was taken although objections to such vote were made from the floor, as testified to on Pages 214, 215 by Louis Harden, the Business Agent for the Local, and also by Edison Jones, the Recording Secretary, at Pages 192, 193. Mr. Jones was asked:

'Q. What was the objection?

He answered:

A. Well, some of the members say he couldn't do it because it was only brought up that night and a resolution couldn't be brought up one night and passed the same night.

Q. Was there any response from the Chair to that?

A. No, sir, I didn't hear one.'

On the basis of our findings and the entire record, it is the opinion of this Committee that in order to correct financial malpractice, to restore democratic procedures and to assure the performance of the duties of the Local as a collective bargaining representative, that Local 1830 be placed under a trusteeship in accordance with Article XX of the International Constitution." (emphasis supplied)

The report of the Hearing Committee is quoted at length to demonstrate clearly that there was indeed, as found by the Courts below, substantial evidence on which the ILA relied to impose the trusteeship.

However, if the foregoing findings were not sufficient to have convinced the District Court that there was an adequate basis under both the ILA Constitution and the LMRDA to impose the trusteeship, the hearing before the Court was certainly persuasive.

At the hearing, Bailey testified that he had refused to give the duly elected Financial Secretary the combination to the safe (A 118, 133), refused to give him the key to the union hall (A 118, 139), and would only give him one, if he (Bailey) thought he needed one (A 139), permitted the constitution of the local to be suspended (A 159) in order to amend the initiation fee, and opened a bank account with only himself as signatory. (A 135)

It is evident that the District Court's findings were not "clearly erroneous" but in fact, clearly consistent with the evidence before it.

Nevertheless, Bailey (P-19) states:

> "The Fifth Circuit quoted from the opinion of the District court and adopted the District Court's erroneous conclusion that the International was in good faith in imposing the trusteeship over Local 1830. The Fifth Circuit also adopted the District Court's erroneous conclusion that there was substantial evidence upon which the International's trial committee based its recommendation that trusteeship be imposed, and the Fifth Circuit adopted and approved the erroneous principle of law as stated by the District Court that if the conclusion of the trial committee was

based upon substantial evidence, the District Court does not have the right to set their finding aside. * * * "

It is respectfully submitted that the Fifth Circuit did not merely adopt the District Court's finding as to the substantiality of the evidence. The Court's opinion (P. 64) states:

> "We have reviewed the record and find that the Trial Committee's result is supported by substantial evidence and that the District Judge acted correctly when he ordered that, (emphasis supplied)
>
> '[T]he motions of the plaintiffs for a preliminary and/or permanent injunction and for summary judgment will be denied, and this suit will be dismissed on the merits.' 314 F. Supp. at 454."

However, Bailey now urges this Honorable Court (P. 44) to read the transcript of the Hearing (P-Appendix H) and re-evaluate the evidence adduced at the hearing before the Committee and before the trial court to determine if it was sufficient to impose a trusteeship.

This Court has stated that concurrent findings of the two lower courts will be accepted without re-examination. United States v. O'Donnell, 303 U.S. 501, 508.

Allen v. Trust Company of Georgia, 326 U.S. 630, 636. The record is devoid of any substantial reasons requiring a departure from this policy.

POINT II

THERE IS SUFFICIENT PRECEDENT AND VALID REASONING IN THE DISTRICT COURT'S HOLDING THAT IT IS NOT THE FUNCTION OF THE COURT TO SUBSTITUTE ITS JUDGMENT FOR THAT OF THE TRIAL COMMITTEE.

It has been held that a Court may not weigh the gravity of the conduct leading to a trusteeship, nor can it make its own findings of fact; Barbour v. Sheet Metal Workers International Assn. 401 F.2d 152 (C.A. 6th-1968); nor may a Court substitute its judgment for that of the judgment of the trial committee or executive council. Vars v. Int. Brotherhood of Boilermakers, 215 F. Supp. 943, 949, aff'd. 320 F.2d 576 (C.A. 2d-1963).

In Vars v. Int. Brotherhood of Boilermakers, supra, the Court of Appeals stated:

> "Both parties agree that in an action of this kind, judicial review of the findings of the Union tribunal is limited in nature. The courts are not free to substitute their judgment for that of the trial court or to re-examine the evidence to determine

whether it would have arrived at the same conclusion that was reached by the trial body. Rosen v. District Council No. 9 of New York City, 198 F.Supp. 46 (S.D.N.Y. 1961) Phillips v. Teamsters, Chauffeurs, etc., Local Union No. 560, 209 F.Supp. 768 (D.C. N.J. 1962)."

The Barbour v. Sheet Metal Workers case, supra, is similar to the factual situation involved in the instant case. In that case, the International Trial Board, as quoted by the Court, p. 155, found:

"The record in this case establishes that all has not been well in Local Union No. 292 for some time. It is clear that the normal and proper functioning of the local union was being seriously impaired. This state of affairs may have been brought about by a personal feud between Brother Barbour, who was its president, and Brother Edwin Walters, its Business Representative and Financial Secretary-Treasurer, or it may have been attributable to other causes. * * * "

"The facts out of which the charges against Brother Barbour arose are largely undisputed. Except in minor detail, Brother Barbour, in effect, admitted the acts with which

he was charged. His defense is predicated on the grounds that his actions did not constitute a violation of the International Constitution; that in any event they were justified by existing conditions in the Local union and that the existence of a pending court case excused his defiance of the trusteeship."

As in the Barbour case, Bailey herein has attempted to justify his actions. Although in the Barbour case, the President was expelled, it was the opinion and recommendation of the Trial Committee herein that the proper remedy was to place the Local in Trusteeship.

In Barbour, the District Court ordered reinstatement of the President. The Court of Appeals said at p. 157:

"The District Judge's opinion states his own conclusion that the General Executive Council affirmed the expulsion 'without consideration of charge 5'. We doubt the propriety of impeaching the Trial Board's order by later inquiry into the mental processes of two of its members, as was attempted by counsel for appellee".

POINT III

THE DECISIONS OF THE DISTRICT COURT AND THE COURT OF APPEALS HEREIN DO NOT CONFLICT WITH THE DECISIONS OF ANY OTHER CIRCUIT COURT OF APPEALS.

Petitioner alleges (P. 20) that the decision of the Fifth Circuit conflicts with the decision in Schonfeld v. Raftery, 271 F.Supp. 128, affirmed, 381 F.2d 446 (2nd Cir-1967), and the decision of the Tenth Circuit in United Brotherhood of Carpenters and Joiners of America v. Brown, 343 F 2d 872 (1965).

It is respectfully submitted that there is no conflict between the decision herein and the cases cited by Petitioner.

In the Schonfeld case, the District Court found that a trusteeship had been imposed in bad faith. The Court of Appeals affirmed, stating at p. 447:

> "The record and opinion below make clear that the finding of bad faith was not only not 'clearly erroneous' but was amply justified. * * * "

On the other hand, in the instant case, the District Court found that the trusteeship was established in good faith, a finding affirmed by the Court of Appeals.

The results in Schonfeld v. Raftery, supra, and the result in the instant case are based upon different findings of fact and do not conflict one with the other.

The trusteeship in the United Brotherhood case, supra, relied upon by Bailey was held invalid for two reasons, first, because the labor organization's constitution and by-laws contained no specific provision authorizing it to impose a trusteeship, and, second, because it was not imposed for the purposes set forth in Section 302. The Court of Appeals, p. 881, stated:

> "An examination of the constitution and bylaws of the United Brotherhood discloses that there is no specific provision authorizing it to impose a trusteeship on any of its subordinate locals."

In the instant case there is such authority, a fact not disputed by Bailey.

As to the reasons for imposing the trusteeship herein, they are spelled out in the Committee's Report (A 339-342) which first reviewed some of the evidence (see pp 17-22 supra) adduced at the hearing and stated:

> "On the basis of our findings and the entire record, it is the opinion of this Committee that in order to correct financial malpractice, to

restore democratic procedures and to assure the performance of the duties of the Local as a collective bargaining representative, that Local 1830 be placed under a trusteeship in accordance with Article XX of the International Constitution.

We make the foregoing recommendation with regret on one hand but awareness on the other that in order to carry out our duties as the Executive Council of the International Union and to the Local that such trusteeship be imposed in the best interest of Local 1830 and its membership."

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED.

Respectfully submitted,

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